2: Schapera E-4, 5 (no date) 1930
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thief is a Bergdama or a Bushman, he is tracked and simply shot down, the chief as a rule taking no notice at all of such cases, and, where he does, never siding with the party of the thief.[1]

In the other Nama tribes there seem to have been no private rights of this nature. In certain respects, however, there was a limitation to unrestricted exploitation of the land and its resources by any member of the tribe. Hunting rights over the tribal land, for example, were common to all, but the game was regarded as the herds of the chief. Anybody shooting big game was therefore expected to give him the head and the four lower legs of the animal, while of small game he received portions of the meat. Refusal to yield this tribute was punished. Pasture lands, again, were also common to all, but the chief could order certain grazing grounds to be vacated in order that they might be rested. His consent was also necessary if the inhabitants of any kraal wished to burn the veld shortly before the rainy season, so that when the first rains fell new juicy grass might spring up. These regulations, of course, do not involve interference with established personal rights, but are to be regarded rather as the exercise of recognized control vested in the chiefainship.[2]

In other directions we find recognition given to the prior rights of an individual. If a man dug a well or opened a spring, it was regarded as under his special authority, and, after inspection by the chief, was named after him. Every passer-by had to have his permission before using the water, but it was equally his duty to see that no stranger or his stock was denied access to it. Any man, again, who found a swarm of wild bees in the cleft of a rock or in the hollow of a tree could acquire rights of ownership over their honey by breaking a few twigs and laying them in front of the hive. Whoever then ignored this sign and took away the honey was regarded as a thief and had to recompense the owner. But here also the chief or the head of the kraal exercised some measure of control. If the swarm was still young, it might not be molested, under penalty of punishment, and the owner was also punished if by extracting all the honey he caused the swarm to wander away elsewhere. Moreover, he was expected to give several good combs of the honey to the chief or the kraal head.[3] The private rights casually acquired in this way should not, however, be confused in nature with those noted above to the */nara* bushes, which are based on heredity and shared equally by all members of the tribe.

[1] Schultze, op. cit., 190, 308.
[2] Warmelo, op. cit., 673-4; *Report on the Natives of S.W.A.*, 56. [3] Warmelo, loc. cit.

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421 unobserved by others, to use for himself.[1] And the various ways of acquiring cattle, as well as the internal trade which we have noted, all point clearly to the existence of private property rights. These [685] rights, moreover, are adequately protected. Theft, the furtive or forcible removal of goods belonging to another, is regarded as a serious offence, punishable by severe fines and ostracism, even by [426] flogging, while an incorrigible thief would formerly be killed.[2] The payment of debts, again, is an obligation of honour. If a man is unable to satisfy his creditors, a trustee is appointed to take over and divide his assets among them. He is allowed to keep a few goats and cows, whose milk he may use for the maintenance of himself and his family, but he may not slaughter these animals, for he is regarded as holding them in trust for the creditors.[3]

571 With all this strict regard for private property rights, greed is far from being a characteristic of the Hottentots. They not only share to 574 the utmost with their fellows, but are also very hospitable to strangers, traits favourably commented upon by many observers.[4] A man in possession of food shares, and is expected to share, it freely with others, and greediness in this respect renders him an object of public scorn.[5] Objects of common use are also readily given away temporarily, and in the majority of cases even permanently. To take a goat from a [685] man's herds for food, even in his absence or without his permission, is not unlawful, provided he is informed of the deed; on the other hand the taking of an animal in order to sell it is prohibited. This hospitality is a general custom arising out of the conditions of the country, where for long distances food is unobtainable, and it is based on the idea of reciprocity. No Hottentot need leave a stranger's hut

[1] "Das Recht der Hottentotten," 349.

[2] Kolb, op. cit., 136–7; Schultze, op. cit., 318; Wanderer, "Ueber Rechtsbewusstsein der Nomaden," 875; *Report on the Natives of S.W.A.*, 76.

[3] *Report on the Natives of S.W.A.*, 76; Kohler, op. cit., 331–2.

[4] Cf. Kolb, op. cit., 135; Tindall, *Cape Narrow-Gauged*, 40; Wilms, op. cit., 734; Fehlen, "Die Nama-Hottentotten," 305; von François, op. cit., 222; Schultze, op. cit., 318; *Report on the Natives of S.W.A.*, 77.

[5] An extremely interesting statement of this principle is seen in the following entry made in his diary by Hendrik Witbooi, the famous chief of the *||*Khowesin :—

"Agreement closed 9th January, 1893 :

"The agreement which I make with François Daniel Visser and with anyone who hires a farm from me is as follows :

"1. I charge him £12 per annum.

"2. If he follows his own customs on the farm and if he is cordially to the poor people and does not give them a kibe when they come to him then I charge him £24 per annum.

"3. If strangers come to his farm and he is not hospitable to them but makes them pay for water and pasture, be they white, red, or black, then I charge him £36 per annum."

This document is signed by Hendrik Witbooi and witnessed by eight of his councillors. (Quoted by Kuhn, "The Diary of Hendrik Witbooi," *J. S.W. Afr. Sci. Soc.*, ii (1926–7), 77–8.)

5: Vedder M-5 (ca. 1910) 1928
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South West has become a colony and a mandated territory, 692
confidence in their own jurisdiction has decreased even where it has been left in their hands. They do not regard their own judges as impartial enough to administer justice to the complainant or accused. This is no wonder! As a result of their close cohabitation it is very difficult for a judge to administer justice quite regardless of the person and his property.

3. In earlier days and in some tribal unions still to-day 695
the procedure in a law-suit is as follows: The complainant lodges his complaint with the magistrate who at the same time exercises the powers of a policeman. The magistrate then summons the judges; and the complainant and accused are summoned by messengers. The sitting takes place in the open as a rule. The complainant has to provide sufficient food for the judges as long as they sit. Generally he delivers some goats in advance in payment of the legal expenses. If the accused is unwilling to appear he is brought by force by strong men duly authorised in such circumstances. The complainant as well as the accused stand at a distance from the place where the court is held or squat down on the ground till they are called. The summoned witnesses also remain within a reasonable distance. The magistrate then lays the case before them. The eldest person amongst the judges, who is chairman, then gives the complainant the word. Thereupon the accused is heard. Care is taken that only one person speaks at a time; for the rest absolute freedom prevails. If the case has been sufficiently investigated the complainant and the accused together with the witnesses have to withdraw. The judgment is passed unanimously when possible and pronounced by the chairman. If punishment is to be inflicted it is executed at once and the accused has to replace the goats paid for expenses by the complainant.

4. The methods of punishment in olden days were: Death, 681
executed in many ways according to the nature of crime. He, who had slain someone, was beaten to death with clubs and sticks. When one had shot another, he also was shot. Other sentences were: Fines, payable in goats; corporal punishment in the form of flogging or branding and, lastly, confiscation of property or the declaration of such people, who have been found to be a danger to the public, as of unsound mind. These were then outlawed and could be done away with, without being punished. To-day a sentence of death can only be passed by the Government and duly constituted law-courts. Punishment among the Nama to-day is confined to flogging, fines and fees payable in goats.

5. Rules for the degrees of punishment were never, and 681
have not yet been, definitely fixed. Nevertheless no rule was 685
allowed to be broken within certain boundaries. The confirmed cattle-thief had to expect harder punishment at each conviction and these were usually meted out in the form of

5: Vedder M-5 (ca. 1910) 1928
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681 cuts with a stick until ultimately, in the olden days, the death
685 sentence was decided upon. At the present time, the matter is then referred to the law-courts. In the case of corporal punishment the sentence was usually based on the principle of: Eye for an eye and tooth for a tooth—unless the parties
682 agreed upon another form of indemnity. Murder, high
687 treason, attempted murder of the chief and incest were always
684 punished with death according to the deposition of the old people.— For the execution of corporal punishment a bailiff was appointed and fines were collected by the magistrate.

673 6. Generally they regard disrespectful behaviour towards the old, murder, homicide, bodily injury, theft, illegitimate impregnation and treason as punishable offences.

Lies and perjury are also deemed improper, but are not
838 subject to legal punishment. In the same way adultery is not punishable. Incest becomes a case for the law only when the father refuses to be responsible for the sustenance of the child during its first years, namely, the time when it needs
838 the nursing of the mother. As soon as the child is five years of age, the father takes it and the payments, which as a rule were in cattle and to-day are in money, cease.

It cannot, however, be said that these forms are valid everywhere where there are still unbroken Nama tribes ruled by a chief; and although they still know their old laws, they do not avail themselves of them in every case.

421 7. The proprietary rights of the old Nama were not extensive, and those of the present generation are still more limited as a result of the fact that they hardly possess any lands. Generally speaking we may say that the individual possesses nothing but is the usufructuary of what the family possesses. This even includes clothes and things for daily use.

422 Under personal property one understands the possession of cattle. A child even may receive one or more goats from his father and he uses their milk. He has the right to milk such goats without permission and their progeny are his property. Where natural conditions make it possible every person—man, wife, child—possess a few goats, sheep or even cattle. When these are to be sold it becomes manifest that this personal property continues to be regarded as family property, because in such cases the whole family and not the individual decides whether there should be a sale or not.

423 The land or their tribal territory can under no circumstances become the property of an individual, neither is it the property of the chief. He has not got the right to dispose of or to give away anything of the territory which, in all respects, is regarded as common tribal property, unless the money received be divided amongst the families of the tribe, after they have consented to such a sale. The boundaries of a tribal territory, however, are not fixed. All lands and grounds where members of a tribe have previously grazed

8: Dapper Q-4 (no date) 1933
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arms, afterwards dripping on to them a certain local herb mixed with freshly-cooked sweet milk. These healers, male or female, can be recognized by the numerous roots, trinkets and other odds and ends which they have about their necks[1]).

PUNISHMENTS OF THEFT.

685

Hottentots who go wrong by stealing trinkets or trifles from their fellows are, if caught, beaten with a stick by their king or *chaqua* himself, and not punished more severely. But if they steal on a larger scale, for instance by removing at night the valuable coral beads from the necks and ears of their sleeping companions, they are, when the theft is discovered and brought home to them, made to suffer a much heavier penalty. So, too, those who steal cattle or sheep from one and trade them to another receive the same punishment as is meted out for the theft of beads. The culprit, bound hand and foot, is first left a whole day without food or drink. The following day some of the elders go to the *chaqua* and ask if the law should be carried out (which is done without any condemnation or sentence, but not without proof, although nothing is recorded on paper). Thereupon the king, with a large following of men who though not armed accompany him as [illegible] culprit to be brought before him. The latter is then tied to the tree, and thrashed pretty severely all over the back, so that the blood streams down his body on to the ground. Immediately afterwards he is fastened the other way about, facing the king, and a certain kind of hot gum or resin, melted in a pot, is poured over his naked body from the throat down to the heart, so that his skin at once falls away and hangs down in strips. Then he is again released and given some food. His hands and legs are now again bound together, and he is left for three days without any food at all. Finally, after enduring all these sufferings, he is sometimes banished as well and expelled from the village, so that he must live like a slave to someone else.

[684] 836

When people are caught in illicit intercourse, they are both whipped (if not related by blood), and let off with this punishment. But if the parents of two such lovers find that they are of similar station in rank and wealth, then they are permitted to marry each other. In case this does not take place, they wait to see if the girl becomes pregnant.

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[1]) For a fuller account of Hottentot medical practices, see Ten Rhyne and Grevenbroek, pp. 148, 341 below.